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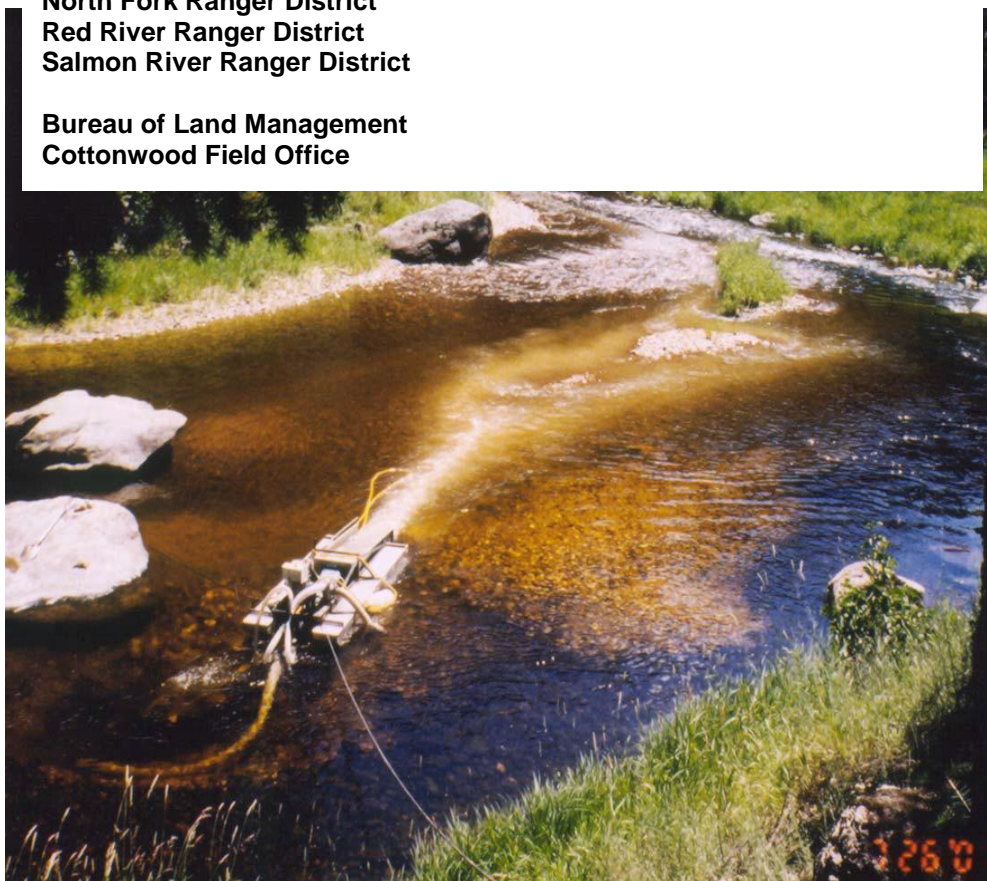


DRAFT Environmental Assessment

Small-Scale Suction Dredging in Orogrande and French Creeks and South Fork Clearwater River

Nez Perce-Clearwater National Forests
North Fork Ranger District
Red River Ranger District
Salmon River Ranger District

Bureau of Land Management
Cottonwood Field Office



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CHAPTER 1

PURPOSE AND NEED FOR ACTION

The Nez Perce-Clearwater National Forests, in conjunction with the Bureau of Land Management Cottonwood Field Office, has prepared this Environmental Assessment (EA) in compliance with the National Environmental Policy Act (NEPA) and other relevant Federal and State laws and regulations. This EA discloses the direct, indirect, and cumulative environmental effects that would result from the Proposed Action and alternatives. Additional documentation, including detailed analyses of project area resources, may be found in the project planning record located at the North Fork Ranger District Office in Orofino, Idaho.

1.0 Introduction

The Nez Perce-Clearwater National Forests (Forests) and Bureau of Land Management Cottonwood Field Office (BLM) are proposing to allow for the approval of a limited number of Plans of Operations (POOs) in specified reaches of the Orogrande and French creeks and the South Fork of the Clearwater River.

The Forests and BLM (Agencies) manage public lands in a geographically diverse area of central Idaho with occurrences of gold, silver, antimony and copper. Currently, there are 26 unpatented mining claims on the Orogrande and French creeks and 37 on the South Fork of the Clearwater River. Ownership of the claims is shared by a total of 98 potential suction dredge operators. Claims are located under the Mining Law of 1872.

The number of operators varies from year to year. This EA analyzes the permitting of a maximum of 35 operators annually, 20 in Orogrande and French creeks and 15 in the South Fork of the Clearwater River. It should be noted that an operation is not synonymous with an unpatented mining claim under the Mining Law of 1872, nor is a mining claim a prerequisite for proposed suction dredging on National Forest System or BLM managed lands.

1.1 Proposed Project Area

Proposed suction dredge mining areas would be located in the mainstems of the Orogrande and French creeks, 5-16 miles east to northeast of Pierce, Idaho in several sections of T37N, R6E, T37N, R7E, T38N, R7E, T38N, R8E, Boise Meridian, Clearwater County, Idaho. They are also located in the mainstem of the South Fork of the Clearwater River in several sections from T30N, R3 and 4E upstream through T29N, R3, 4, and 5; T28N, R5 and 6, and then back into T29N, R6 and 7 and 8, about 1½ miles upstream of Harpster to about Elk City, Idaho County, Idaho.

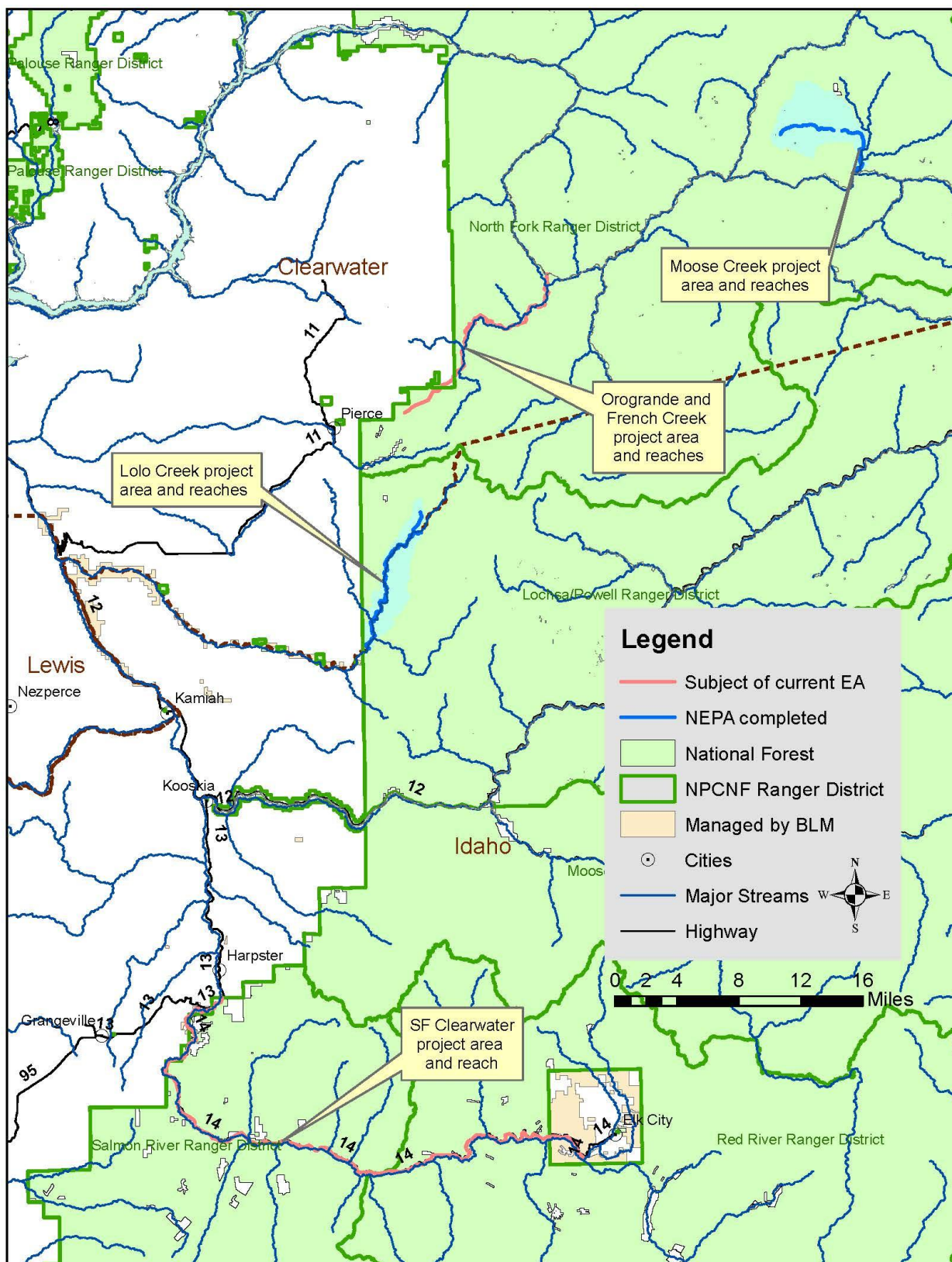
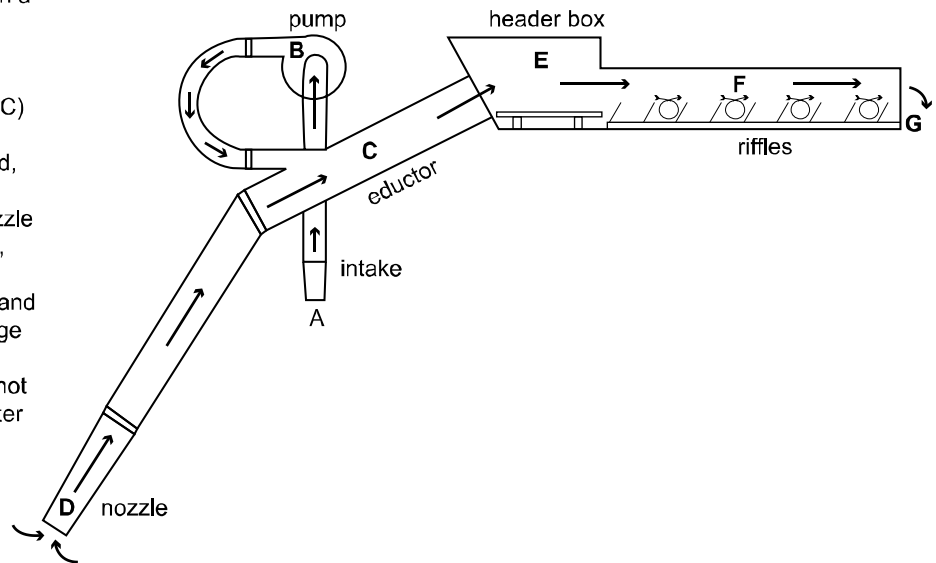


Figure 1-1: Orogrande and French Creeks and South Fork of the Clearwater River Project Areas

Water is sucked through a screened intake (A) by water pump (B). The force of high pressure water into the eductor (C) creates a suction at nozzle (D). Water, sand, gravel and gold are sucked through the nozzle into the header box (E), across the riffles (F) where gold is trapped, and out the end of the dredge (G) into the stream. Streambed material is not sucked through the water pump.



Adapted from Siskiyou National Forest 2001

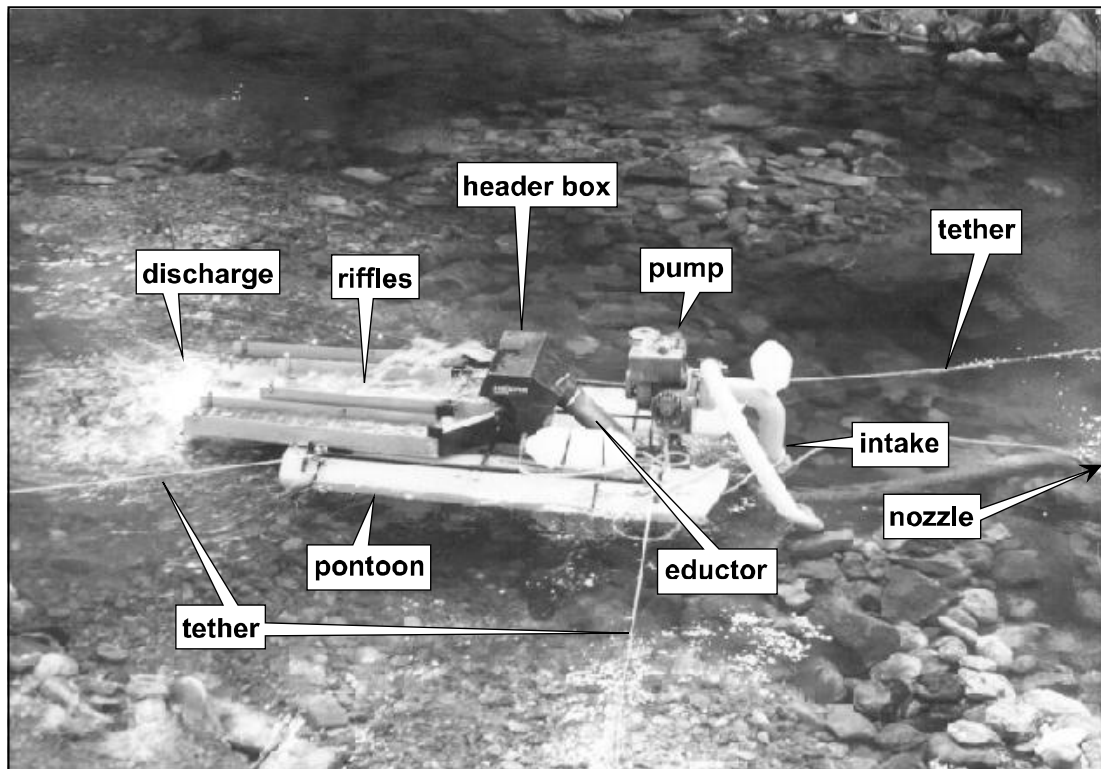


Figure 1-2: Typical Small-Scale Suction Dredge

1.2 Purpose and Need for Action

Many laws, regulations, policies, and plans direct the Agencies to support and facilitate mineral extraction while minimizing adverse environmental effects on public resources and ensuring compliance with applicable environmental laws. The purpose and need for the proposed action is to protect surface resources through the approval of acceptable mining POOs.

Purpose: To allow the Agencies to efficiently and expeditiously process POOs for suction dredging in French and Orogrande creeks and the South Fork of the Clearwater River by requiring that these POOs include standard procedures and conditions to prevent unnecessary and undue degradation of public lands and effectively protect resources.

Need: Each year the Forest Service and the BLM must individually process multiple POOs for small-scale suction dredging within the project areas. This involves preparation of environmental analysis to comply with the NEPA, and consultation with the U.S. Fish and Wildlife Service (FWS) and the National Marine Fisheries Service (NMFS) to comply with Section 7 of the Endangered Species Act (ESA). Processing each action individually is time consuming and inefficient.

All mining proposals, including those submitted by small-scale suction dredge operators, are made under the authority of the United States mining laws (30 U.S.C. 21-45), which confer the statutory right to enter upon public lands for the purpose of exploration and development of mineral resources. The Agencies have the responsibility to analyze and approve POOs, if the surface resource protection requirements are reasonable.

In June 2012, the U.S. Court of Appeals for the 9th Circuit Court ruled that the Forest Service's processing of a Notice of Intent for a proposed mining operation constitutes a Federal action for the purposes of Section 7 consultation in accordance with the Endangered Species Act [*Karuk Tribe of California v. USFS*, 681 F.3d 1006 (9th Cir. 20 12)]. Due to this and several other factors coming to light, the Forest Service determined that suction dredging along streams that contain ESA listed species within the Nez Perce-Clearwater National Forests is a significant disturbance as defined by 36 CFR 228.4(a)(3) and therefore a POO is required along with copies of an approved Idaho Department of Water Resources (IDWR) letter permit and an approved Environmental Protection Agency's National Pollutant Discharge Elimination System (NPDES) general permit. Similarly, the BLM's regulations at 43 CFR 3809.11(c)(6) state that an operator must submit a POO for "Any lands or waters known to contain Federally proposed or listed threatened or endangered species or their proposed or designated critical habitat, unless the BLM allows for other action under a formal land-use plan or threatened or endangered species recovery plan." In addition, the eastern-most section of the South Fork of the Clearwater River is within a BLM area of critical environmental concern (ACEC), and 43 CFR 3809.11(c)(3) requires operators to submit a POO for operations within designated ACECs.

1.3 Existing Conditions

Since the 1860s, placer gold mining has occurred in rivers and streams across the Forests and BLM managed lands. Three of the more productive streams, Orogrande Creek, French Creek, and the South Fork of the Clearwater River have had sporadic mining activity over the years. With the rise in gold prices during the 1970s, there was a renewed interest in prospecting and exploration. Around this time many prospectors started using suction dredges to explore and mine in stream

gravels. Orogrande and French creeks and the South Fork of the Clearwater River are most frequently mined by part-time, small-scale operations using suction dredges with nozzles ranging from two to five inches in diameter and gasoline-powered pumps with up to 15 horsepower motors. Claimant activity ranges from short-term use to season-long stays approved under a POO. Camping and dredging for any amount of time requires a POO on the South Fork of the Clearwater River on Forest Service lands and 43 CFR 3715 occupancy issues would be addressed in an approved POO on BLM managed lands on the South Fork of the Clearwater River. Dredging and occupancy for longer than 18 days in dispersed sites along Orogrande and French creeks will require an approved POO.

Until the late 1990s the suction dredge miners, in accordance with the Agencies' regulations, notified the Forests of their activities through a Notice of Intent (NOI) to operate. Miners were also required to apply for and obtain a 3804-A Stream Alteration Permit from the Idaho Department of Water Resources (IDWR). As of 2015, the IDWR regulates modifications to stream channels under Idaho Administrative Procedures Act (IDAPA) Rule 37.03.07, with specific rules for suction dredging under Rule 37.03.07.064. The IDWR develops a self-issued "recreational" mining "letter permit" annually, with specific conditions and prohibitions ("best management practices," or BMPs) for resource protection. The National Forests in Idaho collectively agreed throughout most of the 1990s that operations implementing State required BMPs could operate in selected streams with minimal or no effect to fish and water quality.

However, in 1997, steelhead trout within the Snake River drainage was listed as a threatened species under the Endangered Species Act (ESA). In 1998, bull trout were also listed as threatened within the Snake River drainage. These listings required Federal agencies to conduct assessments of potential effects as a result of activities the agencies proposed to implement, fund, or permit. As a result, the Forests no longer viewed compliance with IDWR suction dredging BMPs as a sufficient procedural constraint on small-scale suction dredging proposed on Federal lands.

After the 1998 mining season the Forests initiated the process of consulting, under Section 7 of the ESA, with the National Marine Fisheries Service (NMFS) and U.S. Fish and Wildlife Service (FWS) concerning the effects of small-scale suction dredging on bull trout in Moose Creek and two tributaries on the North Fork Ranger District and on bull trout and steelhead in Lolo Creek on the Lochsa Ranger District. Consultation was conducted for small-scale suction dredging activities in Orogrande and French creeks in 2014, but not conducted on the South Fork of the Clearwater River.

Between 2002 and 2013, individuals seeking to suction dredge on BLM managed lands either: 1) Applied for and operated under the IDWR Recreational Suction Dredge Permit which the BLM was afforded the opportunity to review and comment on each year prior to the operating season(s). This process was deemed adequate to satisfy the BLM regulations found at 43 CFR 3809.31 (b)(1). The permit specifically stated that operations on federally managed lands required notification of the appropriate agency to determine if additional requirements applied; or 2) If the operation did not qualify under the IDWR permit, then the operator had to submit a plan to the BLM under the 43 CFR 3809 (b)(2) regulation. The plan would be reviewed as outlined under 3809 regulations for a Notice (3809.300) or a Plan of Operations (3809.400). Since 2013, which is when the Environmental Protection Agency (EPA) came out with their new rules, no suction dredging operations have been processed by the BLM in the Coeur d'Alene District as the Agency works through the process.

1.4 Desired Future Conditions

To have standard procedures in place for small-scale mining in French and Orogrande creeks and the South Fork of the Clearwater River that effectively protect resources including special status fish, prevent unnecessary and undue degradation to public lands, and improve the efficiency of the approval process for POOs.

1.5 Decision Framework

The Forest Supervisor and the BLM Field Manager are the authorized officers. They will review the purpose and need, alternatives, potential environmental effects, and public comments in order to arrive at a decision of whether or not to approve the specified number of POOs for suction dredge operations and associated operating conditions, design criteria, and mitigation measures for those operations in designated areas of Orogrande and French creeks and the South Fork of the Clearwater River.

This decision would be implemented through the approval of specific POOs which meet the requirements described under the selected alternative and the Agencies' surface management regulations found at 36 CFR 228 and 43 CFR 3809. The Forest Service's regulations do not provide for denying a reasonable POO; reasonable POOs must be approved. The BLM's regulations state it can disapprove or withhold approval of a POO if (1) it does not meet the applicable content requirements of §3809.401; (2) Proposes operations that are in an area segregated or withdrawn from the operation of the mining laws, unless the requirements of §3809.100 are met; or (3) Proposes operations that would result in unnecessary or undue degradation of public lands. Although this is non-discretionary, a POO can be constrained or mitigated to protect surface resources. The constraints cannot make the operation economically infeasible, but may still substantially alter a miner's proposal as needed to protect surface resources or meet environmental laws, such as the Clean Water Act and Endangered Species Act. Hence, the decisions to be made concern approval of resource protection measures that constitute one step in the approval process for POOs.

1.6 Regulatory Framework and Consistency

The Agencies' mineral objectives are to manage public lands to accommodate and facilitate the exploration, development, and production of mineral resources, while integrating these activities with the use and conservation of other resources to the fullest extent possible.

This project analysis and documentation of effects is consistent with the direction described below.

Permitting Process

Regulations at 36 CFR Part 228 direct the Forest Service and 43 CFR 3809 direct the BLM to prepare the appropriate level of environmental analysis and documentation when proposed operations may affect surface resources. These regulations do not allow the Agencies to deny entry or preempt the miners' statutory right on lands open to mineral entry granted under the Mining Law of 1872. The regulations require the Agencies to develop mitigation measures to minimize adverse effects to public resources. The Agencies should minimize or prevent adverse effects related or

incidental to mining by imposing reasonable conditions that do not materially interfere with operations.

The permitting process:

- Operators present a POO to the Forest Service or BLM.
- The appropriate Agency completes the suitable environmental analysis to comply with the National Environmental Policy Act. This analysis demonstrates operator's compliance with Clean Water Act, Endangered Species Act and Section 7 consultation and Biological Opinions, which includes design criteria in a POO.
- Discharges from suction dredge operations qualify as point sources and require a Section 402 permit, National Pollutant Discharge Elimination System (NPDES) permit, authorization by EPA. The operators apply for their NPDES permit with EPA. All Section 402 permits must be certified by Idaho Department of Environmental Quality (IDEQ) under Clean Water Act, Section 401. IDEQ must grant, deny, or waive certification for a project before a federal permit or license can be issued.
- Upon completion of 401 certification by IDEQ, EPA can issue their NPDES permit to individual applicants (IDEQ, 2002).
- The Agencies approve POOs for operations after operators have received their NPDES permit. Under the **Idaho Stream Channel Protection Act** [Idaho Code Section 42-3803(a)] dredge operators would also obtain a 3804-B Joint Stream Alteration Permit under Section 404 from the Idaho Department of Water Resources (IDWR) and US Army Corps of Engineers (COE) before any suction dredge mining can be done.

The **Mining Law of 1872** states that all valuable mineral deposits in lands belonging to the United States are to be free and open to exploration. In order to make a discovery of a valuable mineral deposit, the operator has a right under the Mining Law of 1872 to enter upon public lands open to mineral entry, and to prospect and explore for mineral resources. The Law allows for mining claim location and possessory title to the valuable minerals within the location. While miners have rights under the Mining Law of 1872, they are legally required to comply with any applicable laws passed since 1872 that have placed additional requirements upon miners.

The **Organic Administration Act of 1897** affirms the public's right to enter, search for, and develop mineral resources on lands open for mineral entry, and authorizes the Agencies to approve and regulate all activities related to prospecting, exploring, and developing mineral resources.

The **National Forest Management Act of 1974 (NFMA)** (16 U.S.C. 1600-1614), as amended, reorganized, expanded, and otherwise amended the Forest and Rangeland Renewable Resources Planning Act of 1974, which call for the management of renewable resources on Forest Service administered lands. The NFMA requires the Secretary of Agriculture to assess forest lands; develop a management program based on multiple-use; sustained yield principles; and implement a resource management plan for each unit. In accordance with the NFMA, all projects and activities must be consistent with the governing Forest Plan [16 U.S.C. 1604(i)].

The **Federal Land Policy and Management Act of 1976 (FLPMA)** (43 U.S.C. 1701-1782), as amended, requires the Secretary of the Interior to prepare and maintain on a continuing basis an inventory of all public lands and their resources and other values, giving priority to areas of critical

environmental concern, and develop, maintain and, if appropriate, revise land use plans. The Act also addresses the sale, withdrawal, acquisition and exchange of public lands; the issuance of conveyances for public lands and mineral interest; grazing rights; and rights-of-way.

The ***National Environmental Policy Act of 1970 (NEPA)*** (42 U.S.C. 4321 *et seq.*) establishes national environmental policy and goals for the protection, maintenance, and enhancement of the environment and provides a process for implementing these goals within the Federal agencies. NEPA also established the Council on Environmental Quality (CEQ). Title I contains a Declaration of National Environmental Policy that requires the Federal government to use all practicable means to create and maintain conditions under which man and nature can exist in productive harmony. Section 102 requires Federal agencies to incorporate environmental considerations in their planning and decision making through a systematic interdisciplinary approach. Specifically, all Federal agencies are to prepare detailed statements assessing the environmental effects of and alternatives to major Federal actions significantly affecting the environment.

The ***Multiple Use Mining Act of 1955*** directs that any mining claim located after July 23, 1955, shall not be used, prior to issuance of patent, for any purposes other than prospecting, mining or processing operations and uses reasonably incident thereto, and that such claims shall be subject to the right of the United States to manage and dispose of vegetative surface resources and to manage other surface resources, and the right of the United States, its permittees, and licensees to use so much of the surface as may be necessary for such purposes or for access to adjacent land.

The ***Mining and Mineral Policy Act of 1970*** directs the Federal Government to foster and encourage private enterprise in the development of economically sound and stable industries, and in the orderly and economic development of domestic resources to help assure satisfaction of industrial, security, and environmental needs.

The ***Agencies Surface Use Regulations*** (36 CFR Part 228 Subpart A and 43 CFR 3809) set forth rules and procedures for use of the surface of public lands in connection with mineral operations both on and off mining claims. The regulations direct the Agencies to prepare the appropriate level of environmental analysis and documentation when proposed operations may significantly affect surface resources. These regulations do not allow the Agencies to deny entry or preempt the miners' statutory right on lands open to mineral entry granted under the Mining Law of 1872. The regulations require the Agencies to develop mitigation measures to minimize adverse effects on public resources. The Forest Service Part 228 regulations and the BLM Manual 3809 – Surface Management include requirements for reclamation.

The ***Forest Service Manual (FSM) 2800 and BLM Regulations 43 CFR 3809*** discuss specific responsibilities and considerations for dealing with a POO. They state that the Agencies should minimize or prevent adverse effects related or incidental to mining by imposing reasonable conditions that do not materially interfere with operations.

The ***Clean Water Act (CWA)*** (33 U.S.C. 1251 *et seq.*), as amended, sets goals to eliminate discharges of pollutants into navigable water, protect fish and wildlife, and prohibit the discharge of toxic pollutants in quantities that could adversely affect the environment. Executive Order (EO) 12088 requires the Forest Service meet the requirements of the Act. Sections 303(d), 313, 401, 402, and 404 of the Clean Water Act, are potentially applicable to suction dredging operations. In particular, the U.S. Environmental Protection Agency (EPA) has determined that suction dredging constitutes a point source discharge of water pollution and requires suction dredge operators to possess a

National Pollutant Discharge Elimination System (NPDES) permit. The current NPDES general suction dredging permit, approved in April 2013, limits suction dredging in the South Fork of the Clearwater River to no more than 15 operations (with a minimum spacing of 800 feet between operating dredges).

The ***Endangered Species Act*** (ESA) (16 U.S.C. 1531-1544) Section 7(a) requires Federal agencies to consult with FWS and/or NMFS, as appropriate, to ensure that their actions are not likely to jeopardize the continued existence of endangered or threatened species or adversely modify or destroy their critical habitats. As required under the ESA, biological assessments and consultation under Section 7 would be completed for this decision. The action alternatives are not expected to result in a jeopardy biological opinion for any listed species.

The ***Clearwater National Forest (CNF) Plan*** (USFS, 1987) and ***Nez Perce National Forest (NPNF) Plan*** (USFS 1987), as amended, guide all natural resource management activities by providing a foundation and framework of standards and guidelines for National Forest System lands administered by the Forests. The proposed project analysis was guided by the goals, objectives, standards, guidelines, and management area direction within the Clearwater and Nez Perce Forest Plans. Forest-wide goals and standards are found in Chapter II of the CNF plan on pages II-3 through II-30. These goals, objectives and standards discuss the need to facilitate the orderly development of mineral commodities and provide for timely, reasonable, effective and economically feasible environmental protections. In 1995 the CNF Plan was amended by the Interim Strategies for Managing Anadromous fish-producing Watersheds on Federal Lands in Eastern Oregon and Washington, Idaho, and Portions of California (PACFISH) and the Interim Strategies for Managing Fish-producing Watersheds on Federal Lands in Eastern Oregon and Washington, Idaho, Western Montana and Portions of Nevada (INFISH). PACFISH and INFISH provide guidance and monitoring requirements for minimizing impacts to surface resources, especially in relationship to Riparian Habitat Conservation Areas (RHCAs).

Forest-wide goals and standards are also found in Chapter II of the NPNF Plan on pages II-7 through II-24. These goals, objectives, and standards discuss the need to facilitate the orderly development of mineral commodities and provide for timely, reasonable, effective, and economically feasible environmental projections. In 1995 the NPNF Plan was also amended by PACFISH.

Under the ***Clearwater Forest Plan Lawsuit Stipulation of Dismissal (1993)***, the Forest Service signed a settlement agreement with all parties (Sierra Club and the Wilderness Society representing nine co-plaintiffs) agreeing to several points, including that the Forest Service would only proceed with projects which would result in “no measurable increase” in sediment production in drainages currently not meeting Forest Plan standards. These agreements remain in effect until a Forest Plan revision is completed.

The BLM ***Cottonwood Resource Management Plan*** (RMP) (BLM, 2009) provides guidance and direction for “...a comprehensive framework to guide management of BLM-public lands and interests administered lands and resources within by the Cottonwood Field Office. The proposed action is in conformance CFO with the following applicable goals, objectives, and management actions specified in the RMP:

Goal WA-1—Manage water resources to protect beneficial uses and to meet a focus on maintaining or exceed state and federal water quality standards. Maintain or improve the chemical, physical, and biological integrity of water resources.

Objective WA-1.1—Comply with all state and federal requirements to protect water quality.

Action WA-1.1.1—Implement all applicable best management practices to limit non-point source pollution and minimize degradation of water quality.

Goal AF-1—Manage habitat to contribute to the conservation of special status and native fish species.

Objective AF-1.1—Provide for diverse and healthy aquatic habitats that contribute to the recovery of listed fish species and conservation of BLM sensitive fish species.

Action AF-1.1.1—Ensure that all ongoing and new BLM management actions support or do not retard or preclude recovery for federally listed fish (Endangered Species Act), designated critical habitat, and important aquatic habitats (supporting spawning, incubation, larval development, rearing, migration corridors, and aquatic habitats for forage species).

Action AF-1.1.2—Ongoing and new activity or project review will be conducted to assess effects to Essential Fish Habitat [Section 305(b)(2) of the Magnuson-Steven Act]. The BLM will consult with National Marine Fisheries Service on any action that will adversely affect Essential Fish Habitat for Chinook or Coho salmon (*O. kisutch*) and will implement appropriate measures to avoid, mitigate, or minimize adverse effects.

Goal CR-2—Reduce imminent threats and resolve potential conflicts from natural or human-caused deterioration, or potential conflict with other resources uses, by ensuring that all authorizations for land use and restoring resource use will comply with National Historic Preservation Act, Section 106.

Objective CR-2.1—Determine potential effects from proposed land use authorizations.

Action CR-2.1.4—Minimize effects to site integrity by project redesign, cancellation, or mitigation when significant cultural resources are identified from inventories or consultation.

Action CR-2.1.5—Monitor a sample of previously completed land use authorizations on an annual basis to determine if site objectives were met.

Goal AR-1—Maintain or enhance relevant conditions and helping provide community stability through resource values of more than local importance, use and enjoyment.”

Objective AR-1.12—Protect cultural resources, specifically historical mining sites through the designation of the American River Historic Sites District ACEC (6,347 acres).

Action AR-1.12.1—Require mining Plans of Operations as a means to manage long-term mineral exploration/development in areas of high cultural site density

Section 106 of the **National Historic Preservation Act** (NHPA) (16 U.S.C. 470) requires that federal agencies evaluate the effects of their actions on historical, archaeological, and cultural resources and afford the Advisory Council on Historic Preservation opportunities to comment on the proposed undertaking.

A cultural resource inventory is being conducted for the project area and the findings will be submitted to the Idaho State Historic Preservation Officer (SHPO) for concurrence.

The ***Executive Order 12898, Federal Actions to Address Environmental Justice in Minority and Low Income Populations***, directs federal agencies to identify and address, as appropriate, disproportionately high and adverse health and environmental impacts on minority and low-income populations. The proposed activities would not disproportionately adversely affect minority or low-income populations, including American Indian tribal members.

In accordance with ***Tribal Treaty Rights***, American Indian tribes are afforded special rights under various federal statutes: NHPA; NFMA; Archaeological Resources Protection Act of 1979 (ARPA) (43 CFR Part 7); Native American Graves Protection and Repatriation Act of 1990 (NAGPRA) (43 CFR Part 10); Religious Freedom Restoration Act of 1993 (P.L. 103141); and the American Indian Religious Freedom Act of 1978 (AIRFA). Federal guidelines direct Federal agencies to consult with Tribal representatives who may have concerns about Federal actions that may affect religious practices, other traditional cultural uses, or cultural resource sites and remains associated with Tribal ancestors. Any Tribe whose aboriginal territory occurs within a project area is afforded the opportunity to voice concerns governed by NHPA, NAGPRA, or AIRFA.

Federal responsibilities to consult with Tribes are included in the NFMA; Interior Secretarial Order 3175 of 1993; and EOs 12875, 13007, 12866, and 13084. EO 12875 calls for regular consultation with Tribal governments. EO 13007 requires consultation with Tribes and religious representatives on the access, use, and protection of sacred sites. EO 12866 requires that Federal agencies seek views of Tribal officials before imposing regulatory requirements that might affect them. EO 13084 provides direction regarding consultation and coordination with Tribes relative to fee waivers. EO 12898 directs Federal agencies to focus on the human health and environmental conditions in minority and low income communities, especially in instances where decisions may adversely affect those populations. NEPA regulations (40 CFR 1500-1508) invite Tribes to participate in forest management projects and activities that may affect them.

Portions of the Forests are located within ceded lands of the Nez Perce Tribe. Ceded lands are Federal administered lands on which the Federal government recognizes that a Tribe has certain inherent rights conferred by treaty. In Article 3 of the Nez Perce Treaty of 1855, the United States of America and the Nez Perce Tribe mutually agreed that the Nez Perce Tribe retain the following rights:

...taking fish at all usual and accustomed places in common with citizens of the territory [of Idaho]; and of creating temporary buildings for curing, together with the privilege of hunting, gathering roots and berries, and pasturing horses and cattle...

The proposed project has been presented to the Nez Perce Tribe at the quarterly staff-to-staff meetings since May 2015.

1.7 Scope of the Analysis

This EA evaluates the potential effects as a result of approving the proposed action.

CEQ requires that Federal agencies consider three types of actions to determine the scope of an EA (40 CFR 1508.25).

Connected Actions are those actions that are closely related. Actions are connected if they automatically trigger other actions that may require environmental analysis; if they cannot or would not proceed unless other actions are taken previously or simultaneously; and if they are interdependent parts of a larger action and depend on the larger action for justification. There are no connected actions for purposes of this proposal.

Similar Actions are those which, when viewed with other reasonably foreseeable proposed actions, have similarities that provide a basis for evaluating their environmental consequences together, but are not necessarily connected. For purposes of this EA, Agencies' approval of multiple POOs are considered to be similar actions; therefore, this analysis considers the approval of 20 POOs on 26 claims in French and Orogrande creeks and 15 POOs on 37 claims on the South Fork of the Clearwater River.

Cumulative Actions are those actions, which when viewed with other proposed actions have incremental effects; and therefore, should be analyzed. This EA considers any past, present, and reasonably foreseeable future activities, which include cattle grazing allotments, timber harvest, and road modifications and maintenance.

In addition, agencies must consider three types of *effects*: direct, indirect and cumulative. The EA discloses the direct, indirect and cumulative effects in Chapter 3. The cumulative effects analysis considered geographic boundaries of the effects; time frames (determining how far into the future to analyze cumulative effects); and past, present, and reasonably foreseeable future actions. The physical boundaries of this analysis are the reaches of Orogrande Creek, French Creek, and the South Fork of the Clearwater River and the extent to which effects may reach downstream or outside of these areas.

In the context of administrative scope, this analysis: (a) is limited to the minerals-based proposed action, (b) is not a general management plan, and (c) would be the final NEPA documentation for future approvals of POOs meeting the terms and conditions of approval.

1.8 Public Involvement

The proposal was listed in the Schedule of Proposed Actions (SOPA) on July 1, 2015 (<http://prdp2fs.ess.usda.gov/project/?project=46844&exp=overview>). On April 17, 2015, the Forest Service mailed scoping letters to 560 interested parties or individuals and the Nez Perce Tribe. The legal notice and request for public scoping comments was published in the paper of record, *The Lewiston Morning Tribune* on April 22, 2015. In addition, the Agencies submitted the proposal to Nez Perce tribal staff members on May 4, 2015 for comment and discussion. Comments were received from a total of 148 individuals and organizations. Comments ranged from criticism of the Agencies for suggesting that any conditions could or should be placed on small-scale suction dredge operations, to support for the proposal, to opposition to all suction dredging.

1.9 Issues

Issues are statements of problems to be solved or problems that may be created by the proposed actions. The proposed action was developed to meet the purpose and need for action. The interdisciplinary team and regulatory agencies developed design criteria, operating conditions, and terms and conditions for this project to assure minimal effects to resources. Project issues identified by the interdisciplinary team and through public scoping are grouped into the categories described below.

1.9.1 Issues Used to Develop Design Criteria and/or Mitigation Measures

The following issues were determined to be important through scoping and guided the design of the action alternatives.

1.9.1.1 Effects to Water Quality

There was a concern that suction dredging would increase sediment production and increase turbidity to the streams; thereby reducing water quality. The South Fork of the Clearwater River is considered a water quality listed stream for sediment/turbidity within the project area (EPA and IDEQ, 2003), but the IDEQ and EPA currently allow up to 15 suction dredging operations within the project reach. There are no sediment/turbidity water quality listed streams within the Orogrande and French creeks drainages (IDEQ, 2003).

To meet the Lawsuit Stipulation of Dismissal, the proposed action and any alternatives were designed to produce no measurable increase in sediment, as well as no measurable increase in bacteria, nutrients, or temperature. An “upward trend” requirement is a condition of the Nez Perce National Forest Plan. Watershed improvement projects conducted and planned by the Forests, BLM, and Nez Perce Tribe have the potential to produce sediment over the short-term but are designed to result in long-term reductions in sediment and an overall net improvement on a watershed basis.

Bedload is a measurement of sediment and larger size particles that move by rolling or sliding along the stream bottom (particularly during periods of high stream flow). If dredging removed large stable substrates it could affect the energy and direction of the stream flow and cause the channel to change by eroding the channel bottom or banks. Bedload added to the suspended load can be used to determine the total sediment load for a stream. However, design criteria and terms and conditions would prevent the undercutting and destabilization of stream banks and channels.

Suction dredging typically involves dredging one or several cone-shaped holes in the streambed, with the excavated material then placed in a pile or into a previously dredged hole. In the proposed channels, suction dredge operators prefer dredging in areas of larger substrate, because more gold tends to be recovered in those areas. While dredging, small boulders and large cobble are moved out of the way or removed from the hole as the dredge operator works their way to bedrock. Once on bedrock, the operator generally works along the bedrock cleaning out crevices with small pry bars and other similar tools. Terms and conditions would prevent the removal of large stable boulders. Prior to moving to a new site, the operator must disperse and backfill all dredge holes and redistribute tailings to avoid creating unstable spawning sites. Because of these design criteria and terms and conditions, channel stability, as described by bedload, would not be affected; and therefore, will not be discussed further in this analysis.

Issue Indicators:

- Increases in terrestrial sediment input to streams;
- Increase in turbidity based on meeting State water quality standards

1.9.1.2 Effects to Aquatic Habitat and Species (including TES, invertebrates and amphibians)

There is a concern that suction dredging would negatively impact aquatic habitats and the species dependent on the habitat. The disturbance of existing habitats could alter spawning habitat, pool frequency, and bank stability. Activities could also increase turbidity which indirectly affect spawning and rearing habitat for a variety of species. Suction dredging could also cause direct mortality of fish, amphibians and invertebrates.

Issue indicators:

- Increases in terrestrial sediment input to streams;
- Increases in turbidity effects on the risk of displacing aquatic species;
- Changes to pool frequency and quality based on filling by dredge activities or removal of large instream woody material;
- Stream bank stability based on disturbance;
- Degradation to spawning gravels by direct disturbance and infiltration by fine sediments; and
- Direct mortality or injury to aquatic species

1.9.2 Other Issues Carried Through the Analysis

1.9.2.1 Riparian Wildlife and Plants

There is a concern that suction dredge operations would remove or damage riparian vegetation through trampling, dispersed camping, and the movement of equipment into and out of the dredging sites. This in turn could affect sensitive wildlife and plant species.

Issue Indicators:

- Effects to sensitive wildlife species- loss or degradation of habitat, disturbance and displacement of species, and potential direct mortality or injury;
- Effects to sensitive plant species- loss or degradation of habitat and potential direct mortality;
- Increases in satellite camps, trails and denuded vegetation;
- Increases in land-based weed species introductions; and
- Increases in aquatic invasive species introductions.

1.9.2.2 Recreational Opportunities and Visual Resources

There is a concern that suction dredging would reduce the quality and quantity of recreational opportunities for fisherman, campers seeking dispersed sites adjacent to water, those seeking access to swimming holes, and other forest visitors.

Issue Indicators:

- Recreational opportunities based on location, size, and timing of dredging activities; and
- Changes in use patterns related to displacement of recreational users to other locations.

1.9.2.3 Effects to Nez Perce Tribal Treaty Rights

There is a concern that suction dredging activities would affect the ability of the Nez Perce Tribe to hunt, fish, and gather on their ceded lands. Activities may also affect Chinook salmon migration, spawning and rearing in the South Fork of the Clearwater River. The Nez Perce Tribe collects adult Chinook from the South Fork of the Clearwater River tributary of Newsome Creek, raises their offspring at the Tribal managed hatchery on the lower Clearwater River, and then releases the juveniles back into Newsome Creek. The IDFG conducts a similar program with adult broodstock collected in the South Fork of the Clearwater River tributaries of the Red and Crooked rivers, with juvenile rearing at the Clearwater Hatchery, and smolt releases to their streams of origin. Issue Indicators:

- Effects to tribal hunting;
- Effects to anadromous and resident fish species as measured by sediment, turbidity, pool frequency and quality, bank stability, spawning gravel quality, and direct mortality to fish; and
- Effects to gathering activities

1.9.3 Issues Decided by Law or Policy, Not Affected by the Proposal, or Outside the Scope of the Project

These issues were found to be non-relevant to the decision, since they are outside the scope of the proposal, already decided by law or policy, beyond the geographic influence of the proposal, or not affected by the proposal. The rationale for why these issues would not be considered in detail in this analysis is discussed below.

1.9.3.1 Mining Issues

There was a concern that the Agencies were materially interfering with dredging activities. Others cautioned that mining claims must be valid. Others felt that the public derived no revenue from mining and a net public benefit from mining needed to be analyzed and that reclamation bonding should be required for suction dredging activities.

The Agencies do not prevent mining operations; however, in compliance with mining laws and the Agencies' regulations, they provide operating conditions, design criteria and mitigation measures under which suction dredging can occur.

The Forest Service Policy on Mining of Public Domain Mineral Estate (Informal Memorandum, USFS, 2003) states "On National Forest system lands and BLM public lands reserved from public domain and open to entry under the Mining Law, the Forest Service and BLM is not required to inquire into claim validity before processing and approving proposed plans of operations." BLM states that, "Because public funds are not plentiful, mining claim validity examinations will be completed only in certain priority circumstances. Those are, in priority order, patent applications, plan of operation or notice in a withdrawn area (segregated area is different), plan or notice for what may be a

common variety, or in cases of flagrant trespass” (BLM Handbook for Mineral Examiners, 2007). In order to prospect, explore, and make a discovery of a valuable mineral deposit or establish valid mining claims, the operator has a right under the Mining Law of 1872 to enter upon public lands and conduct reasonable activities to prospect and explore for mineral resources. Exercise of this right does not require the staking of a mining claim, a fact recognized under the Agencies’ locatable mineral regulations at 36 CFR 228.3(a) and 43 CFR 3809, where mineral operations are defined and it is clearly stated that the Agencies’ regulations apply to all functions, work, activities, and uses reasonably incidental to all phases of mineral exploration and mining under the Mining Law of 1872, whether located on or off mining claims. Miners may bolster local economies through the purchasing of equipment, food, gas and other amenities, however no net public benefit is required for suction dredging activities. .

Reclamation bonding is required under 36 CFR 228.13 and 43 CFR 3809. Reclamation costs would be determined at the pre-mining meeting with each individual operator. The operator provides a guarantee to perform reclamation work in the amount equal to the estimated cost of the work.

1.9.3.2 Effects to Heritage and Cultural Resources

There was a concern that suction dredging could affect heritage and cultural resources in both Orogrande and French creeks, and the South Fork of the Clearwater River drainages. There are several recorded heritage resource sites in these areas. Effects to traditional resources, which may or may not be eligible for the National Register of Historic Places (NRHP), are identified during consultation with the affected groups, such as Native American tribes. Until a formal determination of National Register eligibility is made, all recorded and unrecorded heritage resource sites are treated as eligible for nomination to the NRHP. In addition, the Cottonwood RMP designated the BLM lands in the vicinity of the easternmost segment of the South Fork of the Clearwater River, near Elk City, as an area of critical environmental concern to protect cultural resources – specifically historical mining sites.

Compliance with Section 106 of the NHPA, including survey and eligibility evaluation of potentially affected resources, is being completed. Mitigation measures would require involvement during the planning and monitoring of activities by an Agency archaeologist. Other measures would include informing suction dredge operators about the importance of historic features, and not allowing dredge miners to excavate, disturb, or reuse historic materials or features. Sites at or near dredge locations would be periodically monitored during the dredging activities to ensure compliance with POOs, including avoidance of historic properties. The Agencies regulations and policy require that discovery of any potential heritage resource be left alone and reported to the District Ranger and Agency archaeologist. Should a suction dredge operator uncover a resource while working, work would be stopped immediately, pending inspection by the Agency archaeologist. If the Agency archaeologist identifies NRHP-eligible resources, mitigation measures would be identified during consultation with the Idaho SHPO and, if Native American resources are potentially affected, Tribes.

In summary, project operating conditions, design criteria and mitigation measures would minimize potential effects to heritage resources. If any resources were discovered during project implementations, project activities would cease pending inspection by an Agency archaeologist. Mining POOs include regulations found in 36 CFR 228.4e and 36 CFR 800 to protect cultural resources.

1.10 Availability of Project Files

An important consideration in preparation of this EA has been the reduction of paperwork as specified in 40 CFR 1500.4. In general, the objective is to furnish enough site-specific information to demonstrate a reasoned consideration of the environmental effects of the alternatives and how these effects can be mitigated. More detailed information is in the project file in the District planning records and is available for public inspection.

The reader may want to refer to the Forest Plans and Environmental Impact Statement (EIS) (USFS 1987) and the BLM Record of Decision and Approved Cottonwood Proposed Resource Management Plan (RMP) (2008) and EIS (BLM, 2009). The present EA is "tiered" to the Forest Plan EIS, RMP EIS, and the respective Records of Decision, as encouraged in 40 CFR 1502.20. Copies of the Forest Plan, Forest Plan EIS, and the Cottonwood RMP and EIS, are available at libraries in the project locale and at the Forest Supervisor, Ranger District, and BLM Cottonwood Field Office.

2.0 Proposed Action and Alternatives

This chapter describes the alternatives selected for detailed analysis and those eliminated from further consideration. The chapter includes a description of each alternative along with a comparison of the features of the alternatives as they relate to the purpose and issues, providing a clear basis of choice among the options for the decision maker and public.

2.1 Alternatives Considered in Detail

2.1.1 Alternative 1: No Action

The No Action Alternative is defined as not approving the proposed POOs. Under this alternative, miners who submit POOs for suction dredging in Orogrande and French creeks and the South Fork of the Clearwater River would not receive approval for their POOs unless individual NEPA is completed for each POO submitted.

2.1.2 Alternative 2: Proposed Action

Alternative 2 would allow for the approval of proposed POOs in specified reaches of Orogrande and French creeks and the South Fork of the Clearwater River. The POOs would include specified, design criteria which were derived from public comments, government-to-government consultation with the Nez Perce Tribe, and consultation with other governmental agencies. The maximum number of operations approved in any year under this alternative would be 35, 20 for the Orogrande and French creeks and 15 for the South Fork of the Clearwater River. The claim areas in which POOs may be approved are shown in Figures 2-1 and 2-2. The proposed project areas are located as follows:

Orogrande and French Creeks

5 to 16 miles east and northeast of Pierce, Clearwater County, Idaho in portions of:

- T37N, R6E, S24-27, 33, and 34
- T37N, R7E, S2-7, 18, and 19
- T38N, R7E, S24- 26, and 32, 35
- T38N, R8E, S18, 19, and 30, Boise Meridian

South Fork of the Clearwater River

From approximately 1 ½ upstream of Harpster to about 2 miles downstream of Elk City, Idaho County, Idaho in portions of:

- T30N, R3, S25 and 36
- T30N, R4, S4, 7- 9, 18, 19, 30
- T29N, R3, S1, 12, 13 and 35
- T29N, R4, S18-23, 25-29
- T29N, R5, S27-30, 34, 35 and (36) PB57
- T28N, R5,(S1) PB37
- T28N, R6,S3, 4, 5, (6) and PB37
- T29N, R6, PB51-53, 55, 56
- T29N, R7, S20-22, 26-29, and PB 51-54
- T29N, R8, S29, 30, 32, and 33, Boise Meridian

Suction dredging would be approved only during periods consistent with IDWR and EPA regulations. For Orogrande and French creeks this would be June 30 – September 15; for the South Fork of the Clearwater River this would be July 15 – August 15.

The activities which would be authorized would be substantially restricted to reduce or eliminate effects on Forests and BLM-managed resources and on aquatic and riparian animal and plant species in the project areas. Many of these restrictions were developed to conform to existing IDWR “letter permit” and EPA NPDES General Permit restrictions, and others have been developed in the course of ESA Section 7 consultation with the NMFS and FWS. In addition to restrictions on the specifics of the POOs, the Agencies have also proposed monitoring and reporting on the implementation of the POOs to Federal and State agencies and the general public.

The full list of restrictions, monitoring, and reporting which would be associated with the approval of the proposed POOs is provided in the EA. Briefly, miners with approved POOs would be limited to operating during the respective IDWR “letter permit” dredging seasons, would be limited to 300 linear stream feet of dredging distance in any one season, and operations would be spaced a minimum of 800 linear stream feet apart. Specific areas within approved dredging reaches would be off-limits to operation, including some types of primary habitat for ESA-listed and Forest Service Sensitive species. Agency staff would delineate approved dredging reaches prior to the start of the respective dredging seasons, and would monitor operations and/or stream habitat characteristics before, during, and after dredging operations. The results of this monitoring would be reported before the end of each calendar year.

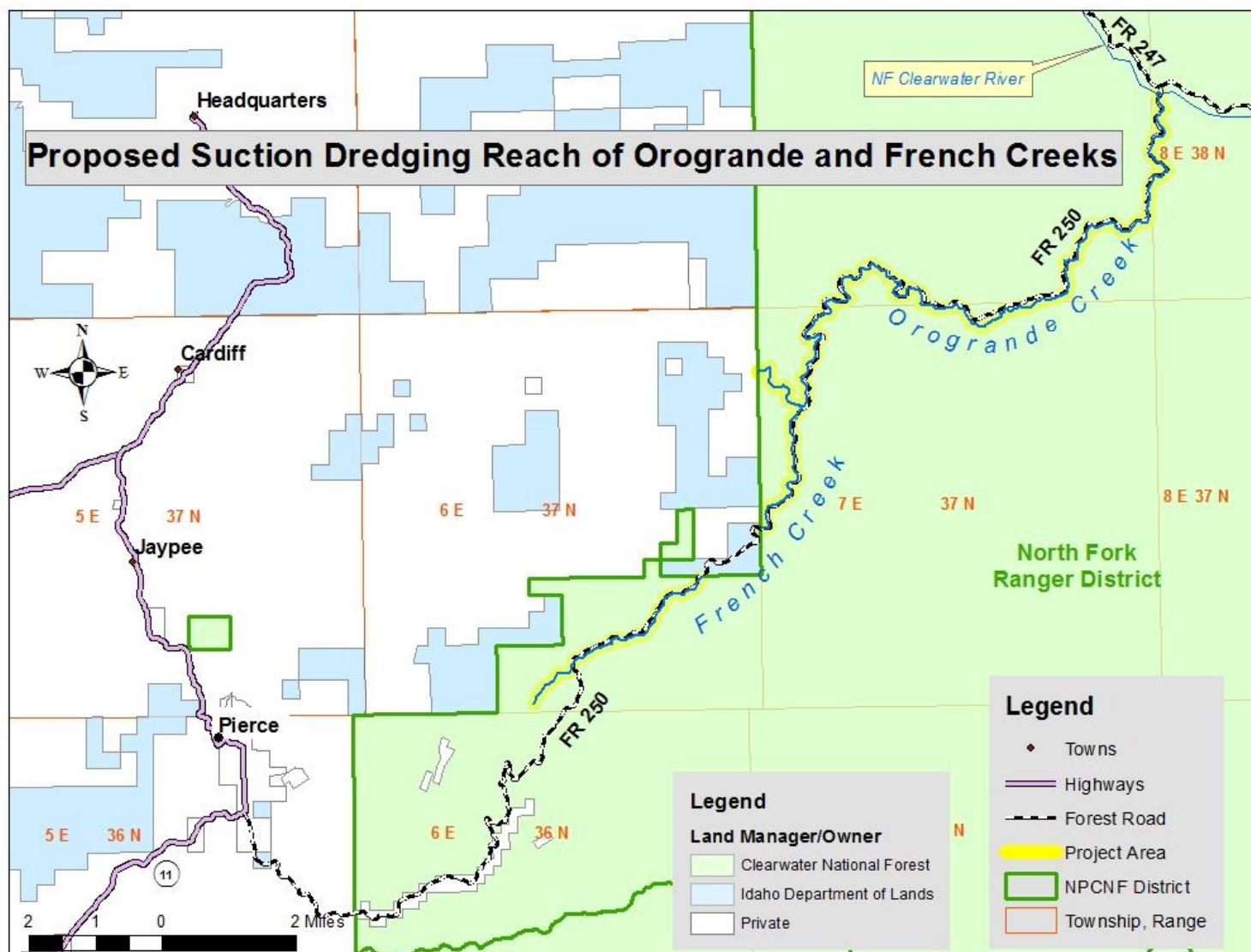


Figure 2-1: Location of the proposed Orogrande and French Creeks suction dredging reach.

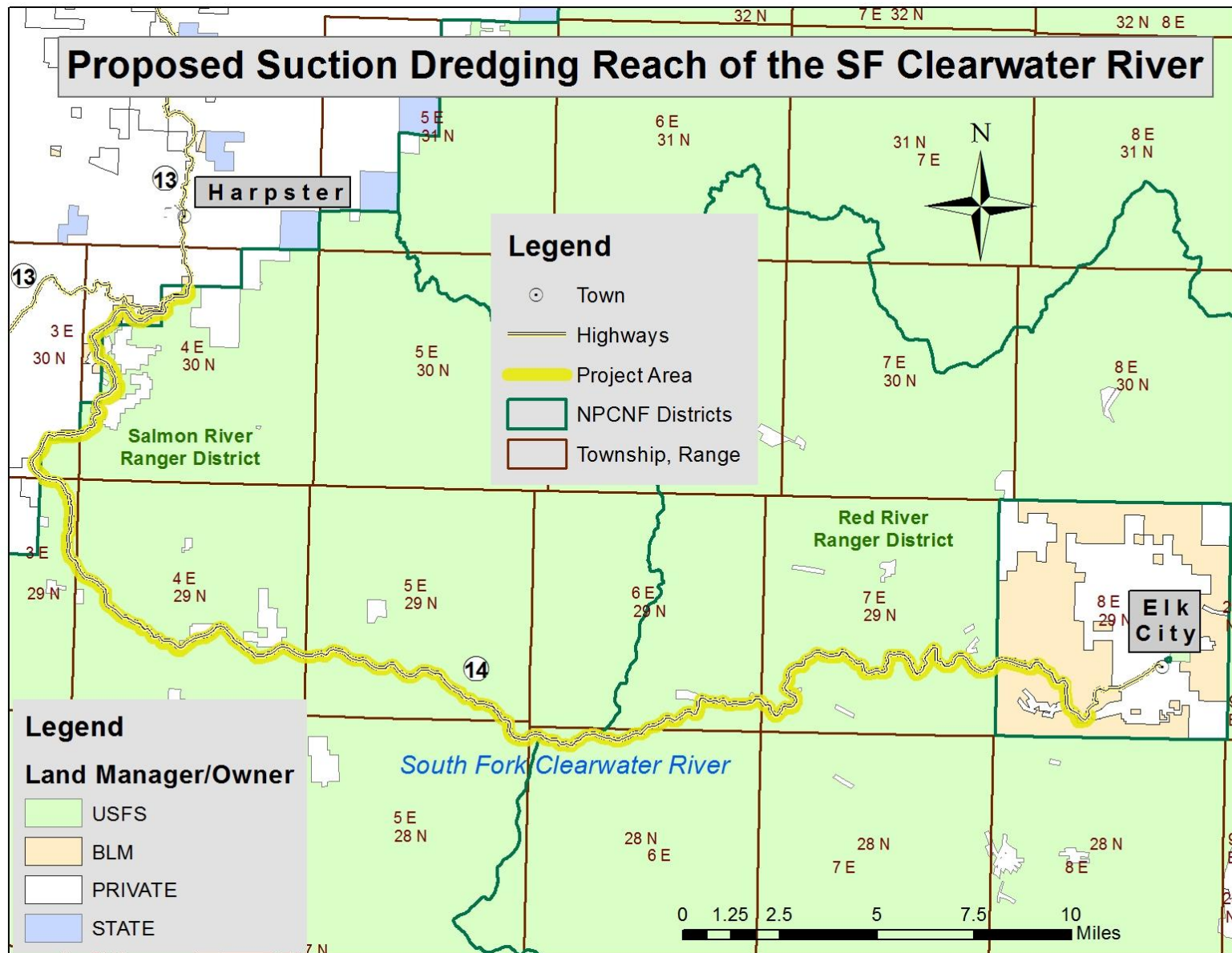


Figure 2-2: Location of the proposed South Fork of the Clearwater River suction dredging reach.

2.1.3 Monitoring and Reporting Requirements

The action alternatives would include the following monitoring and reporting requirements.

To ensure that mining operations are conducted in a manner consistent with the operational conditions associated with consultation, the Agencies would conduct some level of implementation and effectiveness monitoring, the results of which would be communicated to the appropriate agencies and entities.

- As minimum annual site preparation and monitoring activities for each operation, the Agencies would fully delineate (by 15-meter reaches), photograph, and sketch suction dredging or other placer mining sections and monitor site preparation and operations annually for each. The photographs and sketches would clearly document the condition of the active channel of each operational site at the upper and lower boundaries of the delineated site, and at at least three cross sections within or in proximity to the site which are likely to be modified by the mining operation.
- The initial maximum length of a delineated mining operation site would be 45 meters (3 reaches or approximately 150 feet). To the extent that the operator demonstrates that a site is of an insufficient size for the operation the Agencies may add additional reaches up to a maximum site length of 90 meters per season.
- The Agencies would coordinate closely with operators to either conduct full site delineation and any additional pre-project data collection prior to initiation of operations at the site or to initially direct operators to specific areas within their dredging sections that would have little or no potential for direct effects on individual ESA-listed species or enduring habitat effects. The Agencies would also make site visits at all active mining operations during the dredging season to record site information and ensure that miners are complying with NOI/POO conditions.
- A post-project monitoring visit of each mining site would also be conducted annually by the Agencies within 1 month of the end of the IDWR dredging season. At a minimum, post-project photographs would be sufficient in location and number to document any substantial changes in stream channel and riparian conditions when compared with pre-project photos. In particular, project area modifications which are likely to persist into the next steelhead spawning season or spring/summer Chinook spawning season should be noted.

2.2 Alternatives Eliminated from Detailed Consideration

Federal agencies are required by the NEPA to rigorously explore and objectively evaluate all reasonable alternatives and to briefly discuss the reasons for eliminating any alternatives that were not analyzed in detail (40 CFR 1502.14). Public scoping comments received in response to the Proposed Action provided suggestions for alternative methods for achieving the purpose and need. Some of the alternatives would have modified the Proposed Action to the point that the purpose and need for action would not be met, would have been duplicative of the alternatives considered in detail, or were determined to be components that would cause unnecessary environmental harm. Therefore, the following alternatives were considered, but eliminated from detailed analysis for the reasons summarized below.

2.2.1 Alternative 3 - Withdrawal of Special Areas from Mining

A commenter stated that the Agencies withdraw all Riparian Habitat Conservation Areas (RHCAs), potentially eligible National Wild and Scenic Rivers, and/or all areas that contain special features. Withdrawn lands are closed to mineral entry under the mining laws. This alternative was not carried forward because it is not consistent with the purpose and need to develop operating conditions that protect surface resources so that the POOs can be approved. This alternative is not in compliance with the Mining Law of 1872 and Agencies minerals regulations at 36 CFR 228.4(f) and 43 CFR 3809.

Neither PACFISH or INFISH or the BLM's Resource Management Plan (BLM, 2009) direction precludes mining activities in RHCAs. PACFISH does require an approved POO, a reclamation plan, and a reclamation bond. INFISH requires the Agencies to take all practicable measures to maintain, protect, and rehabilitate fish and wildlife habitat affected by mining operations within RHCAs, but does not require POOs or bonding. Proposed activities are also consistent with standard MM-6 for the inspection, monitoring and reporting for mineral activities.

Proposed project areas do not lie within designated Wild or Scenic Rivers. Forest Plan standards for managing minerals within Wild and Scenic River corridors require mitigation of mineral extraction on visual, recreation and water resources.

2.2.2 Alternative 4 – Operation Specific NEPA Analyses

A commenter stated that the Agencies should conduct an environmental analysis for each small-scale suction dredging operation. This analysis evaluated the effects of multiple operations. CEQ regulations require that similar, connected and cumulative actions be considered during an analysis. Therefore, it is appropriate to analyze all suction dredging operations under one EA.

2.3 Comparison of Alternatives

This section provides a summary of the potential effects to each resource that would result from implementation of each alternative considered in detail. Table 2-1 summarizes the findings for each alternative, and allows a comparison of potential effects among the alternatives.

Each alternative has been evaluated for its effects on the resources based on the key issue that drove the development of the alternative. Issue indicators are parameters used to measure the effects of each alternative on the resources emphasized by the issue.

The proposed action was formulated considering an array of internal issues, including effects to water quality, aquatic habitat and species, riparian wildlife and plants, recreation, visual and cultural resources, tribal treaty rights, and roadless areas.

Table 2-1: Alternative Summary

<i>Resource Issue</i> ♦ <i>Issue Indicator</i>		
	<i>Alternative 1: No Action</i>	<i>Alternative 2: Proposed Action</i>
Water Quality		
♦ Increases in sediment	No effect	no increase from terrestrial sources; existing instream sediment moved from one location to another but no increase in overall sediment
♦ Increase in turbidity	no effect; IDEQ standards would continue to be met or not	slight increase during 78 day (32 day for SFCR) operation period but would not exceed IDEQ state standards
Aquatic Habitat and Species (including TES, Invertebrates and amphibians)		
♦ Increase in sediment	No effect	no increase from terrestrial sediment; existing instream sediment moved from one location to another; low risk to species
♦ Increase in turbidity	no effect; IDEQ standards would be met	slight increase may affect feeding but risk is low due to short daily and annual duration
♦ Changes to pool frequency and quality	no effect	no change since mining not permitted or preferred in large natural pools
♦ Stream bank stability	no change	no change
♦ Degradation to spawning gravels	no effect	dredging not permitted in prime spawning habitat; minimal effects expected
♦ Direct mortality to aquatic species	no effect	slight potential for fish; higher for aquatic insects; overall would not affect populations

Resource Issue ♦ Issue Indicator		
	Alternative 1: No Action	Alternative 2: Proposed Action
Riparian Wildlife and Plants		
♦ Sensitive wildlife species	no effect	no reduction in habitat; avoidance caused by disturbance would last during 78 day (32 day for SFCR) season and average about 5 hours per day; minimal effects to wildlife based on disturbance; potential mortality to amphibians but risk is low due to low numbers of animals
♦ Sensitive plant species	no effect	no reduction in habitat; potential trampling by miners; effects expected to be limited due use of existing trails by miners and recreationists and expected low populations of plants
Recreational Opportunities and Visual Resources		
♦ Recreational opportunities	no effect	minor effects to fishing, camping and hiking due to limited 78 day (32 day for SFCR) mining season, and small area affected. No <u>Minimal effects</u> to hunting opportunities due to season restrictions.
Nez Perce Tribal Treaty rights		
♦ Tribal hunting	no effect	avoidance by game may occur but duration is about 5 hours per day for 78 days (32 day for SFCR); no effect expected as game have suitable habitat nearby
♦ Anadromous and resident fish species as measured by sediment, turbidity, pool frequency and quality, bank stability, spawning gravel quality and direct mortality to fish	no effect	minimal effects based on turbidity increases and direct mortality of fish; would not affect continued persistence of any species in project areas
♦ Gathering activities	no effect	no expected effects
